



November 28, 2018

Mr. Craig Cheek  
Portland Diamond Project LLC  
4375 South Shore Boulevard  
Lake Oswego, Oregon 97035

**RE: Letter of Intent –Master Development Agreement/Ground Leases  
Terminal 2, Portland, Oregon**

Dear Craig:

The Port is pleased to submit this counter proposal letter of intent (this “LOI”) to Portland Diamond Project, LLC (“PDP”), in conjunction with Trammell Crow Company (as its co master developer), to enter into a Master Development Agreement (the “MDA”) with PDP governing the take down by PDP of one or more Ground Leases for a portion of 45.5 acres of land and additional overwater structures commonly known as Terminal 2 in Portland, Oregon (the “Property”).

The Port understands PDP’s proposed use of the Property includes construction and operation of a Major League Baseball (“MLB”) stadium (the “Stadium”) and certain associated parking, infrastructure, and ancillary uses that accompany the Stadium, including large open spaces and gathering places that will be open to the public, and significant new infrastructure that will be developed by either PDP or the City of Portland (the “City”), and ultimately dedicated to the City. In addition, the Port appreciates that PDP intends to develop a new, vibrant, mixed-use district, anchored by the Stadium, which includes office, entertainment, retail, housing, and parks, and is supportive of the City’s guiding principles of prosperity, health, equity and resilience. The Port is excited to work with PDP in connection with exploring the use of the Property for PDP’s vision of bringing baseball to Portland.

Given the current use of the Property, its comprehensive plan designation and zoning, its location within the Guild’s Lake Plan District, the existence of the Prime Industrial Overlay, and the transportation and infrastructure challenges of the project, obtaining the needed approvals will be a significant undertaking. The Port envisions the transaction involving four phases (which overlap to some degree) as follows:

- **Due Diligence Period.** During the Due Diligence Period, as defined below, the parties will conduct their due diligence as to the feasibility of the project on the Property and work together to establish a viable strategy for obtaining the required agency approvals and proceeding with the MDA negotiations described below.

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7200 NE Airport Way Portland OR 97218  
Box 3529 Portland OR 97208  
503 415 6000

- **Exclusivity Period.** Upon completion of the Due Diligence Period and a mutual determination to begin MDA negotiations, the Port will grant PDP longer term exclusive rights to negotiate for use of a mutually agreed upon portion of the Property (the “Premises”) in exchange for payment of a fee (the “Exclusivity Period”). During the Exclusivity Period, PDP and the Port will (a) negotiate the terms of the MDA and any associated agreements; (b) finalize and implement a mutually acceptable strategy for obtaining the required agency approvals; and (c) negotiate terms relating to infrastructure design, timing, and funding with each other, the City, and other agencies.
- **Master Development Agreement.** If mutually agreed to, the parties will enter into an MDA, which will provide for an option payment to the Port (“MDA Option Fee”), provide PDP with options to lease portions of the Premises, and allow PDP to take down one or more ground leases during the term of the MDA subject to certain conditions. The MDA will incorporate termination rights for each party if threshold tasks are not completed within agreed upon time frames, the forms of potential future ground leases, and other agreements necessary or beneficial to the performance of the MDA.
- **Ground Leases.** Once the threshold tasks are completed, PDP will have the right to take down the initial ground lease for either the Stadium and associated common areas and infrastructure or such other use as approved by the Port subject to criteria to be set forth in the MDA (the “Initial Ground Lease”). In addition to the Initial Ground Lease, the MDA shall provide PDP with long term option rights to take down one or more additional ground leases of the Premises (each an “Additional Ground Lease” and together with the Initial Ground Lease, the “Ground Leases”).

The terms and conditions organized by phase are described below:

### **General Information**

<b>Master Developer</b>	Portland Diamond Project LLC, or its approved assignees
<b>Ground Lessor</b>	Port of Portland
<b>Property</b>	Approximately 45.5 acres of land commonly known as Terminal 2, in Portland, Oregon, together with overwater structures as depicted on the attached <b>Exhibit A</b> .
<b>Premises</b>	At a minimum, the Premises will be sufficient in size to accommodate a Stadium and certain associated parking, infrastructure, and ancillary uses that accompany the Stadium. The size, location, and configuration of the Premises will be preliminarily determined during the Due Diligence Period and further detailed during the MDA negotiations described below. PDP understands and acknowledges that the Port does not own the property lying below ordinary high water of the Willamette River, and that the Port’s ability to lease or grant exclusive rights to use any overwater structure (including without limitation the dock) are constrained and limited to the requirements and regulations of the Oregon Department of State Lands.

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In addition, the Port reserves the right to elect to retain a to be determined portion of the Property for its own separate development (the "Port Premises"). The size and location of the Port Premises, if any, and uses allowed thereon will be preliminarily determined during the Due Diligence Period and further detailed in the MDA. The Port's development of the Port Premises will compliment PDP's development of a Stadium and the remainder of the Property. In the event the Port elects to retain the Port Premises, the Port shall be responsible for its prorata share of infrastructure related to the Port Premises.

**Agency** PDP is represented by Kevin Vandenbrink of Macadam Forbes. Upon the take down of the Initial Ground Lease, the Port shall pay a commission to Macadam Forbes in accordance with the Port Commission Policy No. 6.1.5.

**No Association or Joint Venture Established** Neither the MDA nor any Ground Lease is intended to make the Port a stockholder in a joint company, corporation or any other association whatsoever, or to create the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties.

**Nonbinding** Neither party shall be bound by the provisions of this LOI on any legal theory or basis whatsoever, except with regard to negotiations during the Due Diligence and Exclusivity Periods, PDP's obligation to pay the Exclusivity Fee on the terms and conditions set forth below, and the Confidentiality provisions as expressly provided below. Otherwise, the parties shall be bound only upon execution of a definitive MDA, which execution shall be in each party's sole discretion and, for the Port, subject to the approval of the Port of Portland Commission. The transaction documents will contain additional and more detailed terms.

**Fees & Expenses** Except as otherwise expressly provided below, each party will pay its own legal, lending, and other fees and expenses, including customary closing costs, incurred in connection with the negotiations, documentation and closing of this transaction.

**Equity Goals** PDP acknowledges that the Port has adopted diversity, equity, and inclusions goals ("DEI Goals") that inform the Port Commission's consideration of any proposed development. PDP will work in good faith with the Port to ensure that commercially reasonable DEI Goals consistent with the City's guiding principles of prosperity, health, equity and resilience, are incorporated into the MDA and proposed development and understands that the degree to which such DEI Goals are furthered by the proposed development may impact the likelihood of Port Commission approval.

#### **Due Diligence Period**

**Due Diligence Period** The parties shall have one hundred eighty (180) days after this LOI has been executed by both parties (the "Due Diligence Period") to conduct inspections of the Property (in the case of PDP) and to complete whatever other due diligence and feasibility analyses each deems necessary, in each party's

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discretion. The parties will work together during the Due Diligence Period to establish a viable strategy for achieving their mutual objectives for development of the Property that will serve as the basis for the MDA negotiations. During the Due Diligence Period, the parties shall provide each other with documentation and information relevant to the proposed development of the Property as set forth in the Permit and Right of Entry in the form attached hereto as **Exhibit B** (the "PROE"). The documentation and information provided by PDP to the Port shall, at a minimum, include the PDP Deliverables set forth below. Each party understands and agrees that any studies, information, or other documentation provided shall be provided without any warranty, representation, or other assurance as to their accuracy or completeness, and that the only representations or warranties shall be those expressly included in the MDA. Following completion of the Due Diligence Period, the parties may, each in its sole discretion, enter into the Exclusivity Period and the MDA negotiations as defined below. The Due Diligence Period may be terminated early by mutual agreement of the parties. PDP and the Port shall each provide the other with copies of any due diligence studies or reports it prepares or has others prepare during the Due Diligence Period with regards to the Property.

**Due Diligence Permit** In conjunction with its performance of due diligence related to the project and access to the Property for such purposes, PDP and the Port will execute the PROE, which may be extended to include the Exclusivity Period.

**PDP Deliverables** The Port and PDP are parties to that certain Mutual Nondisclosure Agreement, effective as of May 25, 2018 (the "NDA"). The following categories of materials and information shall be disclosed by PDP and/or obtained by the Port in conjunction with the Port's due diligence of PDP's proposal (collectively the "PDP Deliverables") and shall be subject to the NDA:

- Concept plans and layouts for the Stadium, proposed size and location of the Premises desired by PDP, and, to the extent available, the needed transportation facilities.
- Proposed phasing and timing of take downs of the Initial Ground Lease and any Additional Ground Lease(s).
- Financial information of PDP, including ownership structure, in sufficient detail to enable Port to determine PDP's financial ability to execute the project.
- The intended amendments (or options currently under consideration) to the land use regulation(s) affecting the Premises, the schedule for securing the amendments, and how PDP intends to proceed in light of the uncertainties associated with the amendments and their timing.

**Confidentiality** While recognizing that the Port must respond to public records requests to the extent required by law, the parties intend that this LOI and any

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information and discussions associated with it be kept confidential pursuant to the terms and conditions of the NDA. The provisions of the NDA shall be binding on both parties, notwithstanding the otherwise non-binding nature of this LOI.

**Exclusive  
Negotiations  
during Due  
Diligence**

Except for existing leases of the Property (including existing extension options, as applicable) or new short term leases, berth use agreements, and permits that will not unreasonably interfere or conflict with the conduct of due diligence by PDP or the ultimate development of the Premises pursuant to the MDA, the Port shall not sell or market to or negotiate with any other party for the lease or purchase of the Premises during the Due Diligence Period. This provision shall be binding on the Port, notwithstanding the otherwise non-binding nature of this LOI.

**Exclusivity Period**

**Exclusivity Period** A period of up to (2) calendar years, which shall commence immediately following the expiration of the Due Diligence Period or such earlier time as mutually agreed (the "Exclusivity Period"). The Exclusivity Period shall not commence unless prior to the expiration of the Due Diligence Period, PDP and the Port mutually elect in writing to proceed with the project, and PDP timely remits the initial installment of the Exclusivity Fee (as defined below) to the Port. Thereafter, the Exclusivity Period shall continue on a quarterly basis for up to a maximum of eight (8) calendar quarters unless earlier terminated as provided herein. The Exclusivity Period shall terminate on the earliest to occur of the following: (a) the expiration of the first calendar year of the Exclusivity Period, unless extended by mutual agreement of the parties; (b) upon the expiration of the then current quarterly term and PDP's failure to timely pay any installment of the Exclusivity Fee to the Port; (c) as of the effective date of the MDA; (d) the expiration of two (2) calendar years; or (e) as otherwise mutually agreed by the parties.

**Exclusivity Fee** In consideration for the Exclusivity Period, PDP will pay to the Port a fee (the "Exclusivity Fee") as follows:

First Quarter: \$375,000.00

Second Quarter: \$125,000.00

Third Quarter: \$125,000.00

Fourth Quarter: \$125,000.00

Fifth Quarter: \$187,500.00

Sixth Quarter: \$187,500.00

Seventh Quarter: \$187,500.00

Eighth Quarter: \$187,500.00

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PDP shall pay the First Quarter Exclusivity Fee to the Port at commencement of the Exclusivity Period, and shall pay subsequent quarterly installments of the Exclusivity Fee on the first day of each quarter thereafter. The Exclusivity Fee is nonrefundable to PDP and non-applicable to any ground rent under future Ground Leases. If the parties elect to enter into the Exclusivity Period, this provision shall be binding on PDP and the Port, notwithstanding the otherwise non-binding nature of this LOI.

**Exclusivity Period Agreement** If desired by either party, the parties will negotiate a formal recordable agreement describing the rights and obligations running with the Premises during the Exclusivity Period.

**MDA Negotiations** The parties will work together during this period to finalize the strategy for obtaining a land use determination consistent with the intended uses as stated above. The Port shall reasonably cooperate with and support PDP in conjunction with execution of the land use strategy, provided PDP shall be primarily responsible for its implementation. In addition, the parties will negotiate the terms of a mutually agreeable MDA, however, the Port's obligation to enter into an MDA shall be contingent upon Port Commission approval, which shall be at its discretion.

**Exclusive Negotiations during the Exclusivity Period** Except for existing leases of the Premises (including existing extension options, as applicable) or new short-term leases, berth use agreements, and permits that will not unreasonably interfere or conflict with the ultimate development of the Premises pursuant to the MDA, the Port shall not sell or market to or negotiate with any other party for the lease or purchase of the Premises during the Exclusivity Period. During the Exclusivity Period, PDP shall not market or negotiate with any other party or otherwise attempt to acquire or pursue any other property for the development of a Stadium in the Portland metro area. If the parties elect to enter into the Exclusivity Period, this provision shall be binding on PDP and the Port, notwithstanding the otherwise non-binding nature of this LOI.

#### **MDA**

**MDA Term** Up to 12 years, commencing upon execution of the MDA. Each party shall have the right to terminate the MDA upon advance notice and the meeting of other conditions to be negotiated in the MDA.

**Initial Ground Lease Take Down Deadline** If PDP has not taken down the Initial Ground Lease by December 31, 2023, the Port shall have the right to terminate the MDA.

**MDA Option Fee** In consideration for the option rights to be granted to PDP under the MDA, PDP will pay to the Port an annual fee of \$900,000 (NINE HUNDRED THOUSAND DOLLARS AND NO CENTS) on the effective date of the MDA and thereafter each year on the anniversary date of the effective date of the MDA during its term. This fee is nonrefundable to PDP, except in the case of a Port default, and non-applicable to any ground rent under future

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Ground Leases. The fee shall be subject to escalation at a rate of 3% per year, and subject to proportional reduction as each Ground Lease is taken down on portions of the Premises.

<b>Premises Maintenance</b>	The unleased portions of the Premises shall be maintained by the Port.
<b>Property Taxes on Unleased Properties</b>	The parties shall endeavor to structure the transaction in such a way as to prevent the properties not yet taken down under a Ground Lease from being subjected to real estate taxes. If, however, they become subject to real estate taxes, despite the good faith efforts of the parties to structure the transaction in a manner to prevent it, such real estate taxes shall be paid by PDP.
<b>Parcel Formation</b>	The MDA shall establish criteria for the characteristics of an acceptable lot to be taken down under a Ground Lease consistent with City imposed development criteria. These criteria shall be intended to ensure that all remaining land held by the Port and not yet subject to a Ground Lease shall be developable if PDP does not take them down in the future.
<b>Title</b>	The MDA shall include a list of the permitted encumbrances. Neither party shall allow additional encumbrances, except as allowed by the MDA.
<b>Agency Approvals</b>	<p>PDP shall pursue the required approvals for the project with diligence and shall coordinate with the Port in connection with any communications to the City related to the development of the Property. The consulting team currently employed by PDP includes:</p> <ul style="list-style-type: none"><li>• Trammell Crow Company – Co Master Developer with PDP</li><li>• TVA Architecture – Master Planning/Design</li><li>• Populous Architecture – Stadium Design</li><li>• Radler, White (Christe White) – Land Use Counsel</li><li>• Brava Point, LLC (Martha Pelligrino)</li></ul>
<b>Port Cooperation</b>	Subject to PDP's coordination with the Port as required, the Port shall reasonably cooperate and assist with efforts by PDP to obtain the required agency approvals without charge to PDP for the time of Port staff. Third party costs reasonably incurred by the Port and previously approved by PDP will be reimbursed by PDP.
<b>Binding Approvals</b>	No legislative changes or land use approvals shall be proposed to the City or become binding on the Premises without the consent of the Port, which shall not be unreasonably withheld. PDP shall coordinate with the Port in connection with making any proposals to the City regarding the development of the Property.
<b>LIDs and Other Assessments</b>	No LID or similar assessment shall be proposed to the City that has not been first approved by the Port. The Port may condition its approval for any LID or other similar assessment affecting any portion of the Property on the

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receipt of adequate value by the Port for same, as determined by the Port in its reasonable discretion.

### **Ground Leases**

<b>Initial Ground Lease</b>	Unless otherwise agreed by the parties, subject to conditions to be set forth in the MDA, the Initial Ground Lease shall be the ground lease for the portion of the Premises required to construct the Stadium, which may include certain associated parking areas and public spaces.
<b>Other Ground Leases</b>	PDP shall not have the right to take down any other Ground Lease until it has first taken down the Initial Ground Lease and begun construction or provided other assurances, acceptable to the Port, in the Port's sole discretion, that the construction will commence by a date certain.
<b>Dedication of Transportation Facilities, Parks, and Utility Corridors</b>	In association with any Ground Lease, the Port shall dedicate any areas owned by the Port and designated in a mutually agreed to plan for public roadways, transportation facilities, parks, and public utility corridors serving the area of the Ground Lease to the City or other appropriate agency, provided that any areas so dedicated shall be factored into the Ground Lease payments described below, and shall not unreasonably interfere with the development potential of any portions of the Property not yet taken down under a Ground Lease.
<b>Ground Lease Forms</b>	There will be two forms of Ground Lease, one for the Initial Ground Lease, and one for the Additional Ground Lease(s). The Ground Lease forms shall be as negotiated and attached to the MDA.
<b>Ground Lease Term</b>	The Ground Leases will have an initial term of fifty-five (55) years and Lessee will have three options to extend the term of the Ground Leases for ten (10) years each.
<b>Rent Payments</b>	The Ground Leases will be structured with annual rent payments. Rent payments shall commence at the beginning of the month following substantial completion of Lessee's building on the Ground Lease premises. A mechanism for setting the initial year of rent payments for a Ground Lease and subsequent increases shall be negotiated during the Due Diligence Period taking into account the negotiated market value of the property and the negotiated market rate for ground lease payments based upon such value.
<b>Security Deposit</b>	A Security Deposit equal to one year's worth of property taxes shall be posted at the take down and maintained during the term of each Ground Lease in the form of cash or other acceptable security.
<b>Guarantee</b>	The Port shall review PDP's financial information and ownership structure during the Due Diligence Period, and the parties shall negotiate what, if any, guarantee, or other financial assurance, will be required in connection with the take down of the Initial Ground Lease.
<b>Development Standards/</b>	All improvements on the Premises shall be constructed and operated in compliance with all federal, state and City requirements applicable to the

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<b>Development Responsibility</b>	proposed use of the Premises. PDP shall be responsible for all improvements, required permits, and development, occupancy and use fees and charges for development and use of the Premises and for meeting all applicable zoning and development requirements. The Port shall have the right to approve of the proposed development prior to Ground Lease take down based upon criteria to be negotiated in the MDA.
<b>Leased "As Is"</b>	The Premises will be leased "As Is" with no Port representations, indemnification or warranties regarding the condition of the Premises, including, without limitation, the environmental or natural resources condition of the Premises, the suitability of the Premises for Lessee's intended uses, or the availability of utilities, rail, or road access needed for Lessee's intended purposes. Notwithstanding the foregoing, subject to the limitations of the Oregon Tort Claims Act, the MDA shall provide that the Port will indemnify the PDP for any environmental costs related to the existing Portland Harbor Superfund contamination, including natural resource damage, except: (a) to the extent caused or exacerbated by PDP, its sublessees, or its representatives; or (b) if PDP (or its assignee) is otherwise independently identified as a potentially responsible party for such contamination.
<b>Taxes</b>	Lessee shall pay any and all real property taxes which accrue on the Premises after the execution of the MDA. Lessee shall perform its own due diligence review of tax matters through the office of the Multnomah County Assessor, and its own legal counsel and consultants on matters of taxation.
<b>Title to Premises</b>	The Premises will be subject to easements, encumbrances, and other title exceptions typically identified in a preliminary title report at the commencement of the MDA. The Port will cause Chicago Title Insurance Company of Oregon to prepare a preliminary title report for delivery to Lessee. Lessee shall be responsible for confirming that the condition of title is satisfactory for Lessee's intended purpose and for determining and verifying the existence of any improvements and encumbrances on the Premises.
<b>Take Down</b>	Take down of each Ground Lease shall occur as provided in the MDA. The Port shall pay the premium for standard title insurance coverage in the manner set forth in the MDA and half of the escrow costs. The Port will also cooperate with PDP to enable PDP to obtain an extended coverage title policy, but all excess premiums for such policy shall be borne by PDP.

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Mr. Craig Cheek  
November 28, 2018  
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If the terms of this letter are acceptable to you, please sign this letter below and return to us by 5:00 p.m. November 27, 2018, and we will begin coordination with your transaction and property teams. If this letter is not agreed and accepted by that date, it shall automatically expire.

Sincerely,

AGREED & ACCEPTED:

Port of Portland

By:

Title: DIR, BUS DEV & PROP

Date: 28 NOV 18

Portland Diamond Project, LLC

By:

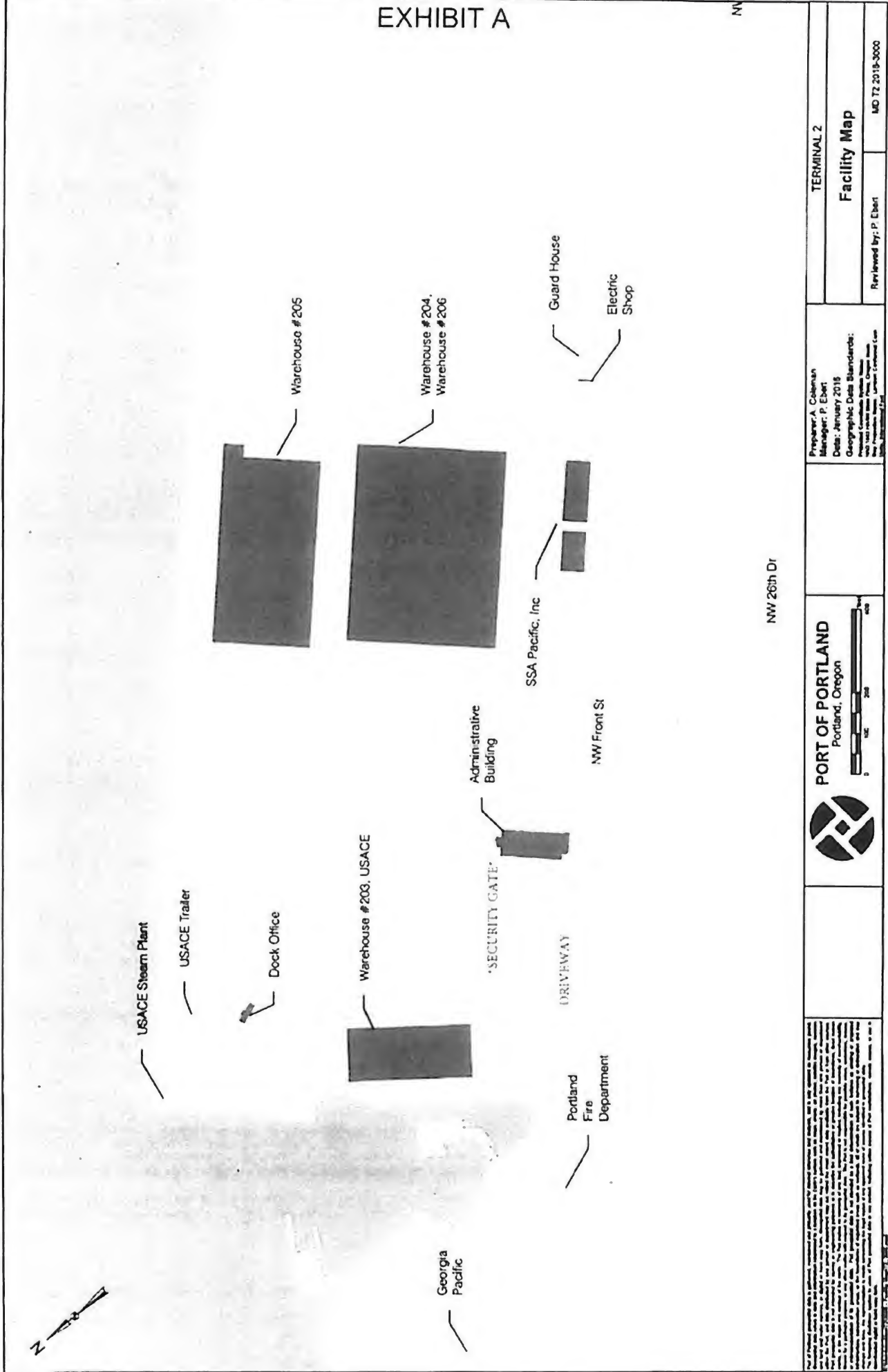
Title: FOUNDER / PRESIDENT

Date: 11/29/2018

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# EXHIBIT A

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<p>Prepared: A. Coleman Manager: P. Elbert Date: January 2015 Geographic Data Standards: Project Coordinate System: NAD 83 Horizontal Datum: NAD 83 Vertical Datum: Mean Sea Level Units: Meters</p>	<p>TERMINAL 2</p>	<p>Facility Map</p>	<p>Reviewed by: P. Elbert MD T2 2015-3000</p>
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## EXHIBIT B



**Port of Portland**

### PERMIT AND RIGHT OF ENTRY

Permit Number: \_\_\_\_\_

**PORTLAND DIAMOND PROJECT LLC  
and PORTLAND DIAMOND  
DEVELOPMENT LLC (collectively  
"Permittee")**

[[ADDRESS]]

[[CITY, STATE, ZIP]]

Attention: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

E mail: \_\_\_\_\_

**THE PORT OF PORTLAND ("Port")**

P.O. Box 3529

Portland, OR 97208

Attention: Debbie Collard

Phone: \_\_\_\_\_

E mail: \_\_\_\_\_

### RECITALS

A. The Port is the owner of certain property located 3556 NW Front Ave., Portland, Oregon 97209, commonly referred to as Terminal 2, and is willing to grant Permittee access to portions of Terminal 2 that are not currently leased to third parties, the boundary of which is shown on **Exhibit A** attached hereto ("Premises").

B. Permittee and the Port are also parties to that certain Mutual Nondisclosure Agreement, effective May 25, 2018 ("NDA").

C. Permittee is in the process of evaluating potential sites for the purposes of developing a Major League Baseball stadium and large-scale mixed development within the City of Portland ("Project"), and desires access to the Premises for the purposes of conducting initial due diligence related to the Project.

D. Permittee further desires to review additional information and documentation related to the Premises in the Port's possession in connection with evaluating the Project's potential location.

E. The Port is willing to grant Permittee access to the Premises and furnish documentation related to the Premises on the terms and conditions set forth below.

### PERMIT

NOW, THEREFORE, in consideration of the promises and covenants contained in this Permit and Right of Entry ("Permit") and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows.

#### 1. RECITALS

The Recitals above are true and are incorporated into and are a part of this Permit.

#### 2. TERM

The term of this Permit shall commence and be binding upon the Port and Permittee as of 8:00 a.m. on \_\_\_\_\_, 2018 ("Effective Date") and end at 8 p.m. on \_\_\_\_\_, 2019, unless otherwise extended or earlier terminated pursuant to the terms of this Permit ("Term").

### **3. PREMISES**

The Port hereby grants to Permittee the nonexclusive right to enter upon and use the Premises in accordance with the terms and conditions set forth below.

### **4. PERMITTED USE**

This Permit authorizes Permittee and Permittee's employees, officers, members, partners, directors, agents, contractors, subcontractors, consultants, customers, licensees, or invitees ("Permittee's Representatives") to enter upon the Premises in order conduct due diligence activities including studies and non-invasive investigations, including without limitation, environmental site assessment and other studies as Permittee deems necessary or desirable in connection with its due diligence investigation and potential lease of a portion of the Property, subject to the limitations and conditions described in this Permit ("Permitted Use"). Permittee shall use the Premises solely for the Permitted Use and for no other use. Permittee shall not unreasonably interfere with the operations or use of the Premises by existing Port tenants, or other Port owned property. Permittee shall not use, handle, or store any Hazardous Substances (as defined in Section 9.1.4) on the Premises other than fuel or petroleum products to be used for the purpose of powering vehicles or equipment, that are fully contained in Permittee's vehicles and/or equipment.

### **5. EXCHANGE OF INFORMATION, NDA COVERAGE**

#### **5.1 Port Information**

As of the Effective Date the, Port shall have created and granted Permittee access to a Port-hosted online data room ("Data Room"). The Port will grant access to the Data Room to additional Permittee's Representatives promptly on Permittee's request. Within ten (10) business days after the Effective Date, the Port shall upload documents to the Data Room that the Port determines are potentially relevant to the possible location of the Project at the Premises, which documents may include without limitation surveys, permits, studies, and/or reports in the Port's possession, custody, or control ("Port Documents"). Thereafter during the Term, the Port shall reasonably cooperate with Permittee and upload additional Port Documents as reasonably requested by Permittee, provided that nothing in this Permit shall be construed as obligating the Port to disclose any Port Documents that the Port identifies as subject to any privilege, commercially sensitive, or that are otherwise subject to confidentiality obligations. All Port Documents uploaded to the Data Room shall be deemed "Confidential Information" as that term is defined in the NDA, and shall be subject to the provisions of the NDA irrespective of whether or not they are independently and individually marked as "Confidential."

#### **5.2 Permittee Information**

Within ten (10) business days after the Effective Date, Permittee shall upload documents to the Data Room that the Permittee determines are potentially relevant to the possible location of the Project at the Premises, which documents may include without limitation plans, drawings, financial information related to the Project, scopes of work, studies, and/or reports (including environmental studies and/or reports) in Permittee's possession, custody, or control ("Permittee Documents"). Thereafter during the Term, the Permittee shall reasonably cooperate with the Port and upload additional Permittee Documents as reasonably requested by the Port, provided that nothing in this Permit shall be construed as obligating the Permittee to disclose any Permittee Documents that Permittee identifies as subject to any privilege, commercially



sensitive, or that are otherwise subject to confidentiality obligations. All Permittee Documents provided by Permittee to the Port via the Data Room shall be deemed "Confidential Information" as that term is defined in the NDA, and shall be subject to the provisions of the NDA irrespective of whether or not they are independently and individually marked as "Confidential."

## **6. CONDITIONS**

The following conditions shall apply to Permittee's use of the Premises:

### **6.1 Access to Premises; Port Contact for On Site Questions**

Permittee shall use the designated gate shown on **Exhibit A** as the ingress and egress route for access to and from the Premises. Permittee understands and acknowledges that the Premises are part of a secure marine facility. Permittee and each of Permittee's Representatives shall at all times comply with the Port's Marine Terminal Security Guidelines, available at [https://popcdn.azureedge.net/pdfs/Mar\\_Serty\\_Trmnl\\_Gdlns.pdf](https://popcdn.azureedge.net/pdfs/Mar_Serty_Trmnl_Gdlns.pdf), and must also be escorted by authorized Port personnel at all times while on the Premises. Permittee shall contact Patti Freeman at [REDACTED] not less than forty-eight (48) hours in advance, to arrange access to the Premises, and otherwise as needed with any questions or other on-site issues. Permittee acknowledges that the Premises may contain natural resources, wildlife habitats, and are adjacent to waterways. In order to protect such resources, Permittee shall not drive, park, or otherwise operate vehicles outside of paved or other improved surfaces without the prior written consent of the Port, which the Port may withhold in its sole discretion. Unless otherwise expressly authorized by this Permit, Permittee shall not store any vehicles or equipment on the Premises.

### **6.2 Utilities**

The Port provides no utility service to the Premises, and Permittee understands that no electricity, yard lighting, water or any other service will be available to Permittee.

### **6.3 Security Services/Limitation of Liability**

The Port provides no security services for the Premises. Permittee agrees that it is using the Premises at its own risk, and the Port shall have no liability to Permittee and Permittee shall have no claim against the Port for any damage, theft, vandalism or injury caused by the condition of the Premises, or by lack of security services or acts or omissions of other people.

### **6.4 Prohibited Uses**

No washing, fueling, repair, maintenance, or modifications of vehicles or other equipment, or other activities other than the Permitted Uses are permitted on the Premises. In addition, no penetration of the soil surface, soil borings, or excavations of any type shall be made on the Premises without the prior written consent of the Port, which consent may not be unreasonably withheld provided that such consent may be conditioned on: (a) the Port's approval of any related scope of work; (b) Permittee's satisfaction of additional insurance requirements; (c) Permittee's agreement to furnish copies of any reports and test results to the Port free of charge; (d) Permittee's agreement to allow the Port to split sample any materials; and (e) Permittee's compliance with the provisions of this Permit. No soil borings shall be made that would likely create a safety hazard. Permittee shall be responsible for all utility locates associated with Permittee's use and investigation of the Premises and shall be responsible for any damage caused in connection with Permittee's activities under this Permit. Upon termination of



this Permit any soil borings must be filled and the Premises otherwise restored as provided in Section 14.

## **7. CONSIDERATION**

In consideration for this Permit, Permittee agrees to pay the Port the amount of SEVENTY-THREE DOLLARS AND NO CENTS (\$73.00) per hour for a minimum of four (4) hours per visit, which constitutes reimbursement of costs incurred by the Port in connection with providing escorted access to the Premises. The fee for escorted access may be increased by one and one half (1 ½) times if the individual providing the escort is eligible for overtime during the period of service.

### **7.1 Payments; No Offset**

Permittee shall pay consideration due to the Port on or before the first (1<sup>st</sup>) day of each calendar month. Payment due under this Permit shall be made without offset, abatement or deduction, to the Port at the following address or such other place as the Port may designate:

The Port of Portland  
P.O. Box 5095  
Portland, OR 97208 5095

### **7.2 Late Payments**

#### **7.2.1 Delinquent Payment**

If Permittee is delinquent in paying to the Port any consideration owed to the Port under this Permit, Permittee shall pay to the Port its then prevailing Delinquency Charge (as defined in Section 7.2.2), assessed on the delinquent amount. The Delinquency Charge shall accrue from the date such amount is due until it is paid in full.

#### **7.2.2 Delinquency Charge**

All consideration not paid by Permittee when due shall bear a delinquency charge of eighteen percent (18%) per annum ("Delinquency Charge") or the maximum rate of interest allowed by law, whichever is less, from the date such consideration is due until it is paid in full. The Delinquency Charge is subject to periodic change, at the Port's sole discretion, but in no case, shall such change be inconsistent with Port policy and practice with respect to the amount of the Delinquency Charge imposed on other similar permittees of the Port. No change shall occur, however, without at least thirty (30) calendar days prior written notice to Permittee. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port due to Permittee's failure to timely pay amounts due.

#### **7.2.3 Returned Checks**

If Permittee's check for payment of consideration due under this Permit is returned to the Port for any reason, the payment shall be considered not to have been made and shall be delinquent. In addition to the Delinquency Charge, the Port may charge Permittee a returned check fee of FIFTY DOLLARS AND NO CENTS (\$50.00) per returned check, which Permittee agrees is a reasonable fee for the additional administrative time and expense incurred by the Port in having to deal with the returned check. The Delinquency Charge shall continue to accrue until the returned check fee is paid, the check can be cashed, and the Port receives all

amounts due. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port due to Permittee's failure to timely pay a returned check fee.

## **8. NO LIENS**

Permittee agrees to pay, when due, all amounts for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided to the Premises or ordered with Permittee's consent. Permittee shall not suffer or permit any liens to attach to all or any part of the Premises by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to Permittee. If any lien is filed against the Premises, Permittee shall cause the lien to be discharged of record within thirty (30) calendar days after the date of filing of the same, by payment, deposit or bond. Failure to remove the lien or furnish cash or bond acceptable to the Port within thirty (30) calendar days shall constitute a default under this Permit and the Port shall automatically have the right, but not the obligation, to pay the lien off with no notice to Permittee and Permittee shall immediately reimburse the Port for any amounts so paid to remove any such lien.

## **9. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE**

### **9.1 Definitions**

For the purposes of this Permit, the following definitions shall apply.

#### **9.1.1 Best Management Practices**

"Best Management Practices" shall mean: (a) those environmental or operational standards or guidelines that establish common and accepted practices appropriate for Permittee's operations on the Premises; and (b) standards or guidelines as stated by pertinent trade associations, professional associations or regulatory agencies.

#### **9.1.2 Environmental Costs**

"Environmental Costs" shall mean damages, fines, costs and fees arising from: (a) any violation of or noncompliance with applicable Environmental Law (as defined in Section 9.1.3); or (b) any violation of the environmental provisions of this Permit. Environmental Costs shall also include the costs of: (i) immediate response, complete remediation, and restoration actions; (ii) Natural Resources Damage (as defined in Section 9.1.6); (iii) self-help pursuant to Section 9.7; (iv) oversight and participation of governmental agencies, including natural resource trustees; (v) reasonable and documented fees of project managers, attorneys, legal assistants, engineers, consultants, accountants, and experts, whether or not employees of the damaged party and whether or not taxable as costs, incurred prior to, at, or after any administrative or judicial proceeding, including appeals and other forms of judicial review; and (vi) diminution in value, loss or restriction on use of the Premises including, but not limited to, costs resulting from dealing with residual Hazardous Substances (as defined in Section 9.1.4).

#### **9.1.3 Environmental Law**

"Environmental Law" shall mean any and all federal, State of Oregon, regional and local laws, regulations, rules, permit terms, codes, ordinances, and legally enforceable guidance documents, now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which govern materials, substances, regulated wastes, emissions, pollutants, water, storm water, groundwater, wellfield and wellhead protection, cultural resources

protection, animals or plants, noise, or products and relate to the protection of health, safety or the environment, or natural resources including land, sediments, water, storm water, and ground water.

#### **9.1.4 Hazardous Substance**

"Hazardous Substance" shall mean any and all substances, contaminants, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any applicable Environmental Law. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum derived products.

#### **9.1.5 Hazardous Substance Release**

"Hazardous Substance Release" shall mean the threatened or actual spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking, placing, migrating, leaching and seeping of any Hazardous Substance into the air or into or on any land, sediment, or waters.

#### **9.1.6 Natural Resources Damage**

"Natural Resources Damage" shall mean the injury to, destruction of, or loss of natural resources resulting from a Hazardous Substance Release. The measure of damage is: (a) the cost of restoring injured natural resources to their baseline condition; (b) the compensation for the interim loss of injured natural resources pending recovery; and (c) the reasonable cost of a damage assessment. "Natural Resources" shall include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state, an Indian tribe, or a local government.

### **9.2 General Environmental Obligations of Permittee**

Permittee shall manage and conduct all of its activities on or relating to the Premises: (a) in compliance with applicable Environmental Law and the environmental provisions of this Permit; (b) in cooperation with the Port in the Port's efforts to comply with Environmental Law; and (c) in adherence with Best Management Practices applicable to Permittee's and Permittee's Representatives' use of the Premises including, but not limited to, Best Management Practices used for erosion prevention and sediment control. Permittee shall be responsible for ascertaining which Environmental Laws govern its and Permittee's Representatives' activities on or relating to the Premises and shall be responsible for maintaining a current understanding of such Environmental Laws throughout the term of this Permit. Upon request from the Port, Permittee will promptly provide the Port with any permits, plans or submittals required by any regulatory agencies related to Permittee's or Permittee's Representatives' occupation or operations on the Premises.

### **9.3 Use of Hazardous Substances**

Permittee must obtain the Port's prior written approval to use, handle or store any Hazardous Substances on the Premises other than fuel or petroleum products fully contained in Permittee or Permittee's Representatives' vehicles.



## **9.4 Permittee's Liability**

### **9.4.1 Hazardous Substance Releases**

Except as provided in Section 9.4.5, Permittee shall be responsible for all response to, remediation and restoration of Hazardous Substance Releases and associated Environmental Costs on or from the Premises, on other properties, in the air or in adjacent or nearby surface waters and ground water which result from or occur in connection with Permittee's or Permittee's Representatives' occupancy, possession or use of the Premises, and which either occurs during the term of this Permit or continues after the termination of this Permit.

### **9.4.2 Excluded Hazardous Substance Releases**

Notwithstanding anything to the contrary in this Permit, it is the Port's and Permittee's intent not to have this permit cover sources of Hazardous Substance Releases that may exist in the vicinity of the Premises that fall within 42 USC 9607(q) or equivalent Oregon law.

### **9.4.3 Permittee's Liability for Environmental Costs**

Permittee shall be responsible for all Environmental Costs arising under this Permit or arising from the acts or omissions of Permittee or Permittee's Representatives on or adjacent to the Premises. Any Environmental Costs for which Permittee is obligated under this Permit shall be paid by Permittee within thirty (30) calendar days after the date of written notice or invoice from the Port or from the agency assessing such Environmental Costs directly against Permittee. Any Environmental Costs not paid when due shall be subject to an additional Delinquency Charge from the date due until paid in full.

### **9.4.4 Pre-Existing Hazardous Substance Release Revealed by Permitted Activities**

In the event that the activities of Permittee or Permittee's Representatives on the Premises reveal a pre-existing Hazardous Substance Release on the Premises, Permittee shall immediately suspend operations, notify the Port, and secure the Premises. Permittee releases the Port and waives any claim against the Port arising therefrom, including without limitation any damages or costs, for delay or otherwise, arising from any Port efforts to remove, remediate, or otherwise address such pre-existing Hazardous Substance Release.

### **9.4.5 Limitation of Permittee's Liability**

Permittee shall have no responsibility for Hazardous Substance Releases or associated Environmental Costs caused by the Port or the agents, employees, contractors or other tenants of the Port after the Effective Date.

## **9.5 Environmental Inspection**

The Port reserves the right, at any time and from time to time, after notice to Permittee, to inspect the Premises concerning environmental compliance.

## **9.6 Environmental Response and Notice**

In the event of a violation of Environmental Law, a violation of an environmental provision of this Permit, a Hazardous Substance Release, threat of or reasonable suspicion of the

same, or other environmental incident of any kind that occurs on the Premises, Permittee shall promptly notify the Port and shall immediately undertake and diligently pursue all acts necessary or appropriate to cure or correct the violation or investigate, contain and stop the Hazardous Substance Release, and shall restore the Premises or other affected property or water to its pre-existing condition. If notice to the Port must be given on the weekend or after 5:00 p.m. on any day, Permittee shall notify the Port by calling the Port's emergency telephone number:

#### **9.7 Report to the Port**

Within thirty (30) calendar days following completion of any investigatory, containment, remediation or removal action required by this Permit, Permittee shall provide the Port with a written report outlining, in detail, what has been done and the results thereof, and copies of all regulatory correspondence.

#### **9.8 Port's Approval Rights**

Except in the case of an emergency or an agency order requiring immediate action, Permittee shall give the Port reasonable advance notice before beginning any investigatory, remediation or removal procedures. The Port shall have the right to approve or disapprove the proposed investigatory, remediation and removal procedures and the company(ies) and/or individuals conducting such procedures which are required by this Permit or by Environmental Law, whether on the Premises or on any affected property or water. Permittee shall not initiate any risk assessment based remediation or closure without the prior written consent of the Port, which consent may be withheld or conditioned in the Port's sole discretion. The Port will have the right to require Permittee to request oversight from DEQ of any investigatory, containment, remediation and removal activities and/or require Permittee to seek a statement from DEQ of "No Further Action."

#### **9.9 Port's Right of Self-Help**

Except in the event of an emergency or a governmental agency order requiring immediate action, when significant notice cannot be given, the Port shall have the right, upon giving Permittee twenty-four (24) hours written notice, stating the obligations in issue, to perform Permittee's obligations arising under Section 9 and Environmental Law, and charge Permittee the resulting Environmental Costs and the Delinquency Charge from the date any Environmental Costs were incurred into by the Port. The Port may not commence performance on behalf of Permittee under this Section if, within the notice period, Permittee promptly notifies the Port, then begins, and continually and diligently pursues to completion the performance of the obligations set forth in the Port's notice.

### **10. INDEMNITY; REIMBURSEMENT FOR DAMAGE**

PERMITTEE AGREES TO DEFEND (USING LEGAL COUNSEL ACCEPTABLE TO THE PORT), INDEMNIFY, AND HOLD HARMLESS THE PORT FROM AND AGAINST, AND REIMBURSE THE PORT FOR, ANY AND ALL ACTUAL OR ALLEGED CLAIMS, DAMAGES, EXPENSES, COSTS, INCLUDING ENVIRONMENTAL COSTS, FEES (INCLUDING, BUT NOT LIMITED TO, ATTORNEY, ACCOUNTANT, PARALEGAL, EXPERT, AND ESCROW FEES), FINES, AND/OR PENALTIES (COLLECTIVELY "COSTS") WHICH MAY BE IMPOSED UPON OR CLAIMED AGAINST OR INCURRED BY THE PORT AND WHICH, IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY,



ARISE FROM OR ARE IN ANY WAY CONNECTED WITH ANY OF THE FOLLOWING, UNLESS EXCLUSIVELY RESULTING FROM THE PORT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT: (A) ANY ACT, OMISSION OR NEGLIGENCE OF PERMITTEE OR ANY OF PERMITTEE'S REPRESENTATIVES; (B) ANY USE, OCCUPATION, MANAGEMENT OR CONTROL OF THE PREMISES BY PERMITTEE OR ANY OF PERMITTEE'S REPRESENTATIVES, WHETHER OR NOT DUE TO PERMITTEE'S OWN ACT OR OMISSION AND WHETHER OR NOT OCCURRING ON THE PREMISES; (C) ANY BREACH, VIOLATION OR NONPERFORMANCE OF ANY OF PERMITTEE'S OBLIGATIONS UNDER THIS PERMIT; AND (D) ANY DAMAGE CAUSED BY PERMITTEE OR ANY OF PERMITTEE'S REPRESENTATIVES ON OR TO THE PREMISES. THIS INDEMNIFICATION SHALL REQUIRE PERMITTEE TO REIMBURSE THE PORT FOR ANY DIMINUTION IN VALUE OF OR LOST REVENUE FROM THE PREMISES, OR OTHER NEARBY PORT PROPERTY, CAUSED BY HAZARDOUS SUBSTANCE RELEASES FOR WHICH PERMITTEE IS RESPONSIBLE PURSUANT TO SECTION 9, INCLUDING DAMAGES FOR LOSS OF OR RESTRICTION ON USE OF THE PREMISES, OR ANY OTHER PROPERTY, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM ANY ADVERSE IMPACT ON THE LEASING OR SALE OF THE PREMISES OR ANY PROPERTY IN OR NEAR THE PREMISES, WHETHER OWNED BY THE PORT OR OTHER PARTIES. THE INDEMNITY AND REIMBURSEMENT AGREEMENTS SET FORTH IN THIS SECTION SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS PERMIT AND BE FULLY ENFORCEABLE THEREAFTER.

#### **11. NO BENEFIT TO THIRD PARTIES**

The Port and Permittee are the only parties to this Permit and as such are the only parties entitled to enforce its terms. Nothing in this Permit gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

#### **12. INSURANCE**

In addition to any special insurance requirements, Permittee shall maintain commercial general and automobile liability insurance policies insuring Permittee against liability for damages because of personal injury, bodily injury, death, or property damage (including loss of use thereof) and occurring on or in any way related to this Permit or occasioned by reason of operations of Permittee on or from the Premises, including loss of use thereof. The insurance required by this Section shall include coverage for independent contractors and broad form contractual liability and shall have limits of not less than ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) per occurrence. The coverage provided by this policy shall be primary and shall not seek contribution from any insurance or self-insurance carried by the Port. The general liability policy shall cover the Port, its commissioners, directors, and employees as additional insureds. Permittee shall maintain in force workers compensation and employer's liability insurance which meets the requirements of Oregon law. If Permittee is a qualified self insured employer, a copy of Permittee's Certificate of Compliance and a certificate of insurance evidencing excess workers compensation and employer's liability insurance shall be forwarded to the Port upon execution of this Permit.



### **13. PORT'S RIGHT TO TERMINATE**

Notwithstanding any provision contained herein, the Port may terminate this Permit at any time, in writing, for Permittee's violation of any material term of this Permit. Upon notice of termination, Permittee shall immediately leave the Premises. If Permittee holds over after this Permit terminates, Permittee shall be deemed a tenant at sufferance, at the Port's sole discretion. In the event the Port deems Permittee a tenant at sufferance, the Port shall be entitled to evict Permittee. Permittee's obligations and liability to the Port shall survive termination.

### **14. DUTIES UPON TERMINATION**

Upon the expiration or earlier termination of this Permit, Permittee shall restore the Premises to their condition at the commencement of this Permit, to applicable codes, standards of the Port and any requirements of the jurisdiction in which the Premises are located, unless otherwise directed by the Port. In addition, Permittee shall remove any and all of Permittee's property including, but not limited to, fencing, equipment, materials, supplies and debris from the Premises; repair any damage to the Premises caused by Permittee's use thereof and return all keys, if applicable, to the Port. Permittee's obligations and liability to the Port shall survive termination. Any items of Permittee's property which remain on the Premises after the expiration or earlier termination of this Permit may be deemed abandoned, at the Port's option. The Port shall have the option of removing and disposing of any or all such abandoned property and recovering the cost thereof, plus interest from the date of expenditure as a Delinquency Charge, from Permittee upon demand.

### **15. ASSIGNMENT OF INTEREST OR RIGHTS**

Permittee shall not, in any manner, directly or indirectly, by operation of law or otherwise, sublease, assign, transfer or encumber any of Permittee's rights granted by this Permit. Any attempted assignment or transfer shall be void.

### **16. GENERAL PROVISIONS**

#### **16.1 Attorney Fees**

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Permit or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at any hearing, at trial or on any appeal or any petition for review, in addition to all other amounts provided by law. If the Port is required to seek legal assistance to enforce any term of this Permit, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Permit requires Permittee to defend the Port, it is agreed that such defense shall be by legal counsel reasonably acceptable to the Port, understanding that defense may be supplied through an insurance carrier.

#### **16.2 Compliance With Law**

Permittee shall comply with all applicable state, federal, and local laws, including but not limited to, Environmental Law, City of Portland zoning ordinances and laws, rules, regulations,

and policies concerning equal opportunity, nondiscrimination, workers' compensation, and minimum and prevailing wage requirements.

### **16.3 Counterparts**

This Permit may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

### **16.4 Entire Agreement**

This Permit represents the entire agreement between the parties with respect to the subject matter of this Permit, and supersedes all prior agreements, written or oral with respect to the subject matter of this Permit. No amendment to this Permit shall be effective unless in writing and signed by the parties hereto.

### **16.5 Exhibits Incorporated by Reference**

Any and all exhibits attached hereto are incorporated by reference in this Lease for all purposes.

### **16.6 Governing Law; Venue**

This Permit shall be governed, construed and enforced in accordance with the laws of the State of Oregon without reference to any conflict of law provision that would call for the application of the law of another jurisdiction. The exclusive venue for the resolution of any dispute, action, or proceeding arising out of or related to this Permit shall be the state or federal courts located in Multnomah County, Oregon. Each party hereby waives any objection to personal jurisdiction, venue or *forum non conveniens* with respect to any such suit, action or proceeding brought in such courts, and agrees to voluntarily appear and submit to the jurisdiction of such courts.

### **16.7 Installation or Construction of Improvements**

No improvements shall be constructed on the Premises without the Port's prior written consent.

### **16.8 Limitation on Port Liability**

The Port shall have no liability to Permittee for, and Permittee hereby releases the Port from, any loss, damage or injury suffered by Permittee on account of theft or any act or omission of any third party, including other tenants or users of Port property. In addition, in all events whether relating to the foregoing sentence or otherwise, the Port shall only be liable to Permittee for the Port's own willful misconduct or gross negligence, and then only to the extent of actual and not consequential, special, or punitive damages. Permittee hereby waives any other rights or remedies to which it might otherwise be entitled pursuant to applicable statutory or common law.

### **16.9 Notices**

All notices required under this Permit shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by hand to the last address furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the following addresses:



to Permittee:

Portland Diamond Project LLC  
Portland Diamond Development LLC  
[Add Address]  
Attention: \_\_\_\_\_

to the Port:

The Port of Portland  
P.O. Box 3529  
Portland, OR 97208  
Attention: Debbie Collard

The date of service of such notice by mail is agreed to be three (3) calendar days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail or, if delivered by hand, then the actual date of hand delivery.

#### **16.10 Partial Invalidity**

If any provision of this Permit is held to be invalid or unenforceable, the remainder of this Permit, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Permit shall be valid and enforceable to the fullest extent permitted by law.

#### **16.11 Survival**

Any covenant or condition (including, but not limited to, indemnification and reimbursement agreements), set forth in this Permit, the full performance of which is not specifically required prior to the expiration or earlier termination of this Permit, and any covenant or condition which by its terms or nature is to survive, shall survive the expiration or earlier termination of this Permit and shall remain fully enforceable thereafter.

#### **16.12 Time of the Essence**

Time is of the essence in the performance of and adherence to each and every covenant and condition of this Permit.

#### **16.13 Warranty of Authority**

The individuals executing this Permit warrant that they have full authority to execute this Permit on behalf of the Port and Permittee respectively.

#### **16.14 Warranties; Guarantees**

Permittee acknowledges that it has inspected the Premises and has found them to be completely acceptable and safe for Permittee's intended use. The Port makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises or the suitability of the Premises for Permittee's intended uses, and it is agreed that the Port will not be responsible for and Permittee hereby releases the Port, its commissioners, directors, officers, employees, agents and contractors from any loss, damage or costs which may be incurred by Permittee by reason of any such physical condition. Permittee shall be responsible for securing the Premises as necessary or appropriate for Permittee's use of the Premises.



IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the Effective Date.

**PORTLAND DIAMOND PROJECT LLC**

**THE PORT OF PORTLAND**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

As Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**PORTLAND DIAMOND DEVELOPMENT LLC**

**APPROVED FOR LEGAL SUFFICIENCY  
FOR THE PORT OF PORTLAND:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Counsel for The Port of Portland

Print Name: \_\_\_\_\_

As Its: \_\_\_\_\_

Date: \_\_\_\_\_